



The Role of State Courts in Securing School Facility Adequacy and Equity

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Introduction

The 1954 *Brown v. Board of Education* challenge to school segregation highlighted stark disparities in the condition of public school facilities. A half century later, disparities in school facilities persist; indeed in recent years they have widened substantially. Fabulous school facilities have been built in suburban areas while low-income children in central cities are left behind in outdated and often dilapidated structures. Inadequate school facilities represent an important breakdown in the provision of meaningful educational opportunity to all children, and they have serious adverse impacts on local communities.

In response to inaction by state legislatures, recent court decisions across the U.S. have compelled states to improve school facilities in local

districts attended disproportionately by students from low-income families. The primary basis for these challenges is wide funding disparities between rich and poor districts within the state, which translate into inequalities in educational opportunities for students. Other challenges rest on the claim that the facilities supporting students' education in some districts are inadequate to meet the outcomes required by the state. Under its current system of funding school facilities, Michigan is susceptible to legal challenges on both grounds.

This report examines the problem of school facility disparities in Michigan and the prospects of litigation to address this problem. First, we briefly review evidence of the important impact of school facilities on students, teachers, and communities. We then provide an overview of litigation aimed at state school finance systems across the U.S.



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We examine Michigan law as it relates to these issues. We present data reflecting Michigan's capital facilities problem and consider how it might be viewed by the courts. We conclude by noting the essential role of the courts, acting in concert with the state's legislative and executive branches, in establishing a policy context in which Michigan can finally address its school facility problem.

Why School Capital Facilities Matter¹

Most teaching takes place in school buildings, and the quality of those facilities influences the ability of teachers to teach and of students to learn. In well specified econometric models applied to data from all Michigan school districts, Davis (2008) finds that school facility quality is significantly related to student performance on the state's MEAP exam. Previous research suggests several possible reasons for this finding. School facilities affect student and teacher morale, comfort, health, and safety, all of which affect student performance. For example, poor indoor air quality and ventilation contribute to respiratory illnesses and absenteeism. Research has also linked teacher morale and student outcomes to ambient temperature, lighting, and noise levels (U.S. Environmental Protection Agency, 2000; Earthman & Lemasters, 1998).

Teacher turnover is a major problem, particularly in schools serving low-income children. Other things equal, it is difficult to attract and retain top-notch educators to work in outdated, dilapidated and uncomfortable facilities when other schools offer much more hospitable work environments (Buckley et al., 2005; Loeb et al, 2005).

The opportunity to work with modern technologies in schools is ever more important to prepare students for emerging high-skill employment opportunities. Technology-based learning opportunities — from state of the art

science labs to computer-controlled machine tools — can also stimulate students' interest and imagination. Yet access to such technologies is rare in less-affluent communities.²

School buildings also matter for neighborhood and community development. High-quality school facilities attract households to a community, stimulate private residential investment, enhance community pride, and represent a potent community resource as sites for recreation, the arts, and community activities. In Michigan, these potential benefits of school facilities are realized to a far lesser extent in low-income areas where the objective need for such community resources is greatest.

Court Challenges to Funding Systems

Given the importance of school facilities for students and communities, and frustrated by legislative inaction, citizens in many states have turned to the courts for help. A growing number of state courts have required state legislatures to establish an equitable way to fund "adequate" school facilities for all students. The highest courts in over 20 states have declared their state school finance system to be in violation of the state constitution. Court rulings generally order a state to provide funding for an "adequate" education to all of the state's children, providing guidelines but leaving implementation details to the legislature. Legislative responses are then reviewed by the court to determine whether they meet the constitutional standards.

Citizens have challenged the funding systems for operations, for facilities or, in most cases, for both. Most legal challenges turn on equity claims, namely that low-wealth communities (based on taxable property value per pupil) have greatly inferior school facilities, despite taxing themselves at much higher rates than wealthier communities (e.g. *DeRolph v. Ohio*, 1997; *Lake View Sch. Dist. No.*

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25 v. Huckabee, 2002). Many cases include a claim that facilities are inadequate to meet existing state education requirements. Essentially, these claims are based on the links between school facilities and student learning described above.

Historically, local property taxes provided most K-12 public school funding in the United States. States delegated their responsibility for providing education to local districts, enhancing local control. More recently, however, courts across the nation have recognized that state constitutions make education a state responsibility, finding that states must at least provide an adequate education for all children.

With the passage of Proposal A in 1994, Michigan established a state-level system for funding current school operations, which narrowed but did not eliminate disparities in funding and made a court

challenge less likely, though not impossible. Because Proposal A, affected only funding for operations, funding for capital facilities remained a local responsibility, financed only by local property taxes. As Figure 1 shows, Michigan is one of a very few states that provide no state aid for school facilities. Nothing has been done to address the immense disparities in school facilities throughout the state, leaving Michigan particularly vulnerable to a constitutional challenge in state courts.

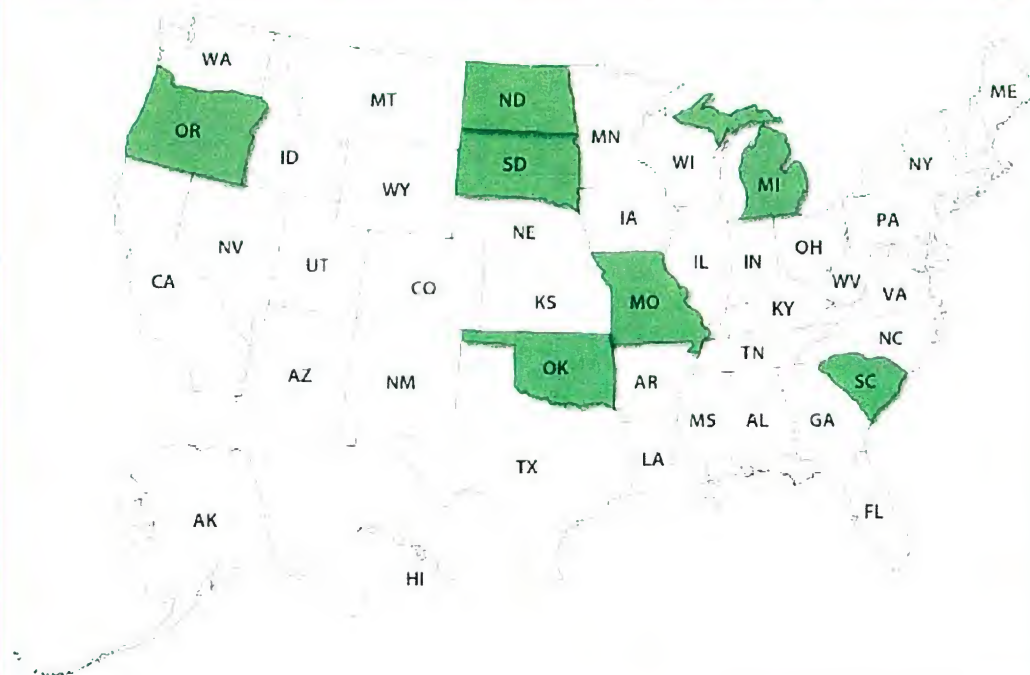
History of School Finance Litigation

Federal and State Equal Protection Clauses

The earliest court challenges to state school finance systems were based on the equal protection clause of the United States Constitution. Though successful in some of the lower courts, in 1973 the United States Supreme Court, in *San*

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Figure 1 States that Provide No State Funding for School Facilities



Based on data from Sielke (2003).

Antonio Independent School District v. Rodriguez, ultimately determined that the U.S. Constitution did not apply to such cases. As a result, other challenges were then filed in state courts under the equal protection clauses of state constitutions. The results of these cases were mixed.

Equal protection claims are based on the existence of a right, in this case the right to an education, which requires equal availability to all citizens. Equality might be defined as 1) providing the same resources for each child in the state, or 2) providing the resources necessary to give each child an equal opportunity, where poorer districts would receive more resources than richer districts, or 3) providing resources that will assure an equal outcome for all children in the state. State courts, including the Michigan Supreme Court in 1973,³ found it difficult to define equality and usually deferred, instead, to an alternative principle of local control, leaving the status quo intact.

State Education Clauses

The next generation of legal challenges was brought under the education clauses of state constitutions, claiming that the state was required to provide an "adequate" education to all children in the state.⁴ The first state court decisions in funding adequacy cases were made in 1989, when courts in Kentucky, Montana and Texas declared their school finance systems unconstitutional under their state constitutions.⁵

Rather than requiring an equal education for all children, courts held that state constitutions required a minimum, or adequate, level of education. In most cases, this meant that so long as children in the poorer school districts received the basic education required by state standards, other districts could choose to provide higher levels. Some courts that had rejected earlier, equal protection, claims subsequently upheld adequacy claims under state education clauses. This is the basis for the large number of

lawsuits brought against states since the 1980s.

While education clauses of state constitutions consistently require the state to provide education, the description of that education is variously described by such terms as free, liberal, uniform, general, complete, thorough, efficient, and suitable. Courts, in turn, attempt to give substantive meaning to these terms in school finance adequacy litigation.

Adequacy

In requiring states to provide an adequate education, courts commonly require the establishment of standards which all students should meet. The advance of adequacy litigation over the last two decades coincided with the standards and accountability movement in American education. Most states, including Michigan, have adopted more extensive and ambitious student performance standards and graduation requirements. Some courts have found such state standards sufficient (e.g., in *Arizona, Hull v. Albrecht*, 1997) while others have required much broader outcomes.

Once standards that meet constitutional requirements are in place, courts look at whether the state is providing the necessary resources for students to meet those standards and whether students in different school districts are, in fact, meeting the standards (results). Because inadequate resources and low student achievement drive citizen lawsuits against the state, courts devote significant critical attention to these two issues.

Resources and Results

In considering whether the state provides an adequate education, courts compare the resources and results of school districts in the state and sometimes in other states. If resources and results are both significantly lower, then the court will find that the education in those districts is inadequate (Umpstead, 2007). Courts

have also recognized that the higher costs associated with providing an adequate education in schools serving high concentrations of low-income or special needs students may require higher funding than in other schools (e.g. Campaign for Fiscal Equity v. State, 2003; Campbell County Sch. Dist. v. State, 1995).

In determining resource adequacy, state courts have examined many indicators of school resources, including class size, teacher training, course offerings, educational supplies and equipment, as well as school building quality. Courts also consider disparities in per-student expenditures and taxpayer burdens. For the courts, large resource disparities between school districts are strong indicators of an inadequate education.

Capital Resources (School Facilities)

Courts have been particularly moved by evidence of substandard school buildings and grounds. Descriptions and photographs of school facility deficiencies are often graphic and strongly affect judges' understanding of the disparities between rich and poor districts. Health and safety issues are of primary importance, and the number of school buildings that do not meet minimum health and safety codes is surprising and disturbing to judges as well as to the general public. Common problems in school buildings in low-wealth districts include broken down plumbing and electrical systems, unstable structural features, inoperative heating and cooling systems, crumbling plaster, and broken windows. Some court opinions cite the relationship between respiratory diseases and air quality and ventilation and the presence of asbestos (e.g., DeRolph v. Ohio, 1997).

Courts also consider whether school buildings have adequate space to serve the number of children assigned to them. School buildings where classes are held in hallways, closets or other areas not intended for classroom use are likely to be

found to be inadequate school facilities. Courts have found schools that lack space for libraries, science labs, computer facilities or physical education to be inadequate.

Inequality of Tax Burdens

Courts also respond to taxpayer inequalities. They are most likely to require state funding when they find that taxpayers in poor districts are subject to higher tax rates but nevertheless have substandard facilities. Such circumstances imply that inadequate facilities are due to insufficient local property wealth not insufficient local tax effort. Courts defer to local control and accept some variation in tax burdens, but they are compelled to act when tax burdens are grossly unequal or when it would be virtually impossible to raise taxes high enough to support adequate facilities in low-wealth communities.

Local Control

In school funding adequacy cases, courts have long wrestled with the principle of local control since an expanded state funding role may compromise this principle. On the one hand, local control has intrinsic merit. Americans prize their control of education at the local level. It is an accepted hallmark of American democracy and one of the most prominent political arenas where citizens still directly control their government. More recently, however, courts, while recognizing the value of local control, ultimately conclude that this principle cannot justify leaving some children with an inadequate, sometimes woefully inadequate, education.⁶

Requiring an adequate education, then, sets a floor below which schools cannot be allowed to fall. If the local district cannot meet that floor, without unrealistically high local property tax rates, then the state must. At the same time, if the local district meets or surpasses the adequacy requirements, the state need

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not interfere. This approach leaves local control in place while providing state support for children in the poorest districts.

Michigan Law

The education clause in Michigan's constitution provides, in Article 8, Section 2, that,

"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."

Clearly under the Michigan constitution it is the state, and not the local government or school district, which is responsible for maintaining and supporting the public school system.

The Michigan Supreme Court, in interpreting the state Constitution, has affirmed the state's responsibility for public schools. In a case decided in 1973, Governor v. State Treasurer, the state Supreme Court turned down a claim under the Michigan Constitution's equal protection clause. But at the same time, two Justices, in a concurring opinion, clearly pointed the way to a future lawsuit on adequacy grounds when they said that the state has an obligation to "maintain

and support a system of public schools that furnishes adequate educational services to all children" (Governor v. Treasurer, 1973, p. 406).

Historically, the Michigan legislature delegated to local districts virtually its entire constitutional obligation to "maintain and support" public schools. Over time as schooling grew in importance and complexity, the burden on citizens in many districts exceeded their ability to adequately fund education. Proposal A was responsive to this problem in the case of day-to-day school operations. Over the last 15 years, however, as inequities in local property wealth have continued to widen, many low-wealth school districts remain even less able to fulfill the responsibility of providing adequate school facilities delegated to them by the state. They will increasingly look back to the state to fulfill its constitutional responsibility.

Inequality in Michigan

Because Michigan, unlike the great majority of states, provides no state funding for school capital facilities, big variations in property wealth between rich and poor communities create large inequalities in their ability to pay for school infrastructure. As indicated in Table 1,

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Table 1: Distribution of Property Value, School Capital, and Debt Mills across Michigan School Districts

Community Type	Number of Districts	Number of Pupils	Taxable Value per Pupil*	Capital Stock (in Millions)	Capital Stock per Pupil*	Average Debt Mills*
Central City	15	292,208	\$109,530	\$3,857	\$13,200	7.436
Low-income Suburb	21	43,790	\$89,074	\$816	\$18,636	5.117
Mid-income Suburb	186	675,295	\$189,017	\$13,608	\$19,351	5.120
High-income Suburb	35	269,133	\$285,368	\$6,975	\$25,916	5.191
Rural	293	343,231	\$178,017	\$6,492	\$18,915	4.608
State	550	1,623,657	\$185,662	\$31,208	\$19,221	5.440

*Pupil-weighted.

Source: Arsen & Davis (2008).

dramatic variations in per-pupil taxable value across Michigan communities are directly correlated with per-pupil school capital. Michigan's current system of school facility finance has generated unequal opportunities for students and unequal burdens for taxpayers. The figures in Table 1 point to a lawsuit waiting to happen.

On average, the per-pupil capital stock and debt millage rates in Michigan's rural districts are slightly below the statewide averages. There is great diversity, however, among rural districts. Several rural districts have very low levels of property wealth and inadequate school facilities.

Inequity for Taxpayers

To see the how variations in local property wealth matter for taxpayers, consider an example in which different communities seek to raise \$90 million to build a new high school. Suppose each community repays the bonds used to finance the new school over 20 years at 6 percent interest rate. A mid-range home in Michigan is worth about \$150,000, with a taxable value of about \$75,000. To build their new high school, the owners of such a house in Saline would be taxed at a rate of 4.7 mills, and pay \$265 per year. If the residents of Bloomfield Hills wanted to build a \$90 million high school, the owners of a median-valued home would pay less than two mills, or \$149, although the typical home owner would pay more because property values are higher. Finally, if Hamtramck and Highland Park, two districts surrounded by Detroit, are combined for illustrative purposes and treated as a single district, the owners of a median-valued home would have to pay over 19 mills, or \$1427 annually for 20 years.

Local Property Taxes Required to Raise \$90 Million in Selected Districts

District	Pupils	Taxable Value Per Pupil	Mills Required	Taxes on \$150,000 Home
Bloomfield Hills	5,717	\$682,399	1.98	\$149
Saline	5,447	\$300,580	4.72	\$265
Hamtramck & Highland Park	7,117	\$57,119	19.03	\$1427

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The education of children in Michigan's high-income suburbs is supported with nearly double the capital facilities available to central city students. Equally striking is that Michigan's central cities are taxing themselves at an average rate that is 43% higher than the average rate for the high-income suburbs. If not for this higher tax effort, the quality of central city school facilities would lag even further behind the facilities in middle- and high-income suburban districts than they presently do.

Arsen and Davis (2008) estimate the cost to local taxpayers of bringing facilities up to an adequate standard in all Michigan districts where facilities are currently inadequate. The school debt millages in Michigan's poorest communities would need to roughly double to achieve adequacy. In fact, many of these school districts could not pay for adequate facilities on their own even if they wanted to, since the required mills would surpass the state's debt millage limit.⁷

School facility conditions in many low-income Michigan communities represent a serious problem that undermines efforts to improve student achievement and close performance gaps with wealthier districts. Courts in several other states have found this to be a state, not local, problem and forced states to find a constitutionally acceptable solution.

Courthouse and Statehouse: Acting in Concert

Many Michigan policy makers, both Democrats and Republicans, recognize that the state's current system of school facility finance is inequitable for taxpayers and generates unequal educational opportunities for students. They are joined in this awareness by educators, students, and citizens across the state—indeed by nearly anyone who has had the opportunity to visit schools in both poor and wealthy communities. School facility finance by all counts represents a primary area of unfinished business left after the passage of Proposal A, and yet it has proven extremely difficult for policy makers in the state's executive and legislative branches to tackle this problem. It, therefore, will almost surely fall to the state's judicial system to break this political impasse.

The State of Michigan has established high performance standards for its K-12 students. Indeed these standards are among the highest in the nation. The establishment of such performance standards carries with it the responsibility for states to provide schools with adequate support to meet these standards. This includes access of all students to adequate school facilities. As noted above, Michigan is one of the few states that has done nothing on this count.

Any policy initiative to provide state support for school facilities in low-wealth communities will likely require the state to raise additional revenues, something which is never politically popular but all

the more difficult to undertake in the midst of the state's current economic downturn. Consequently while policy makers acknowledge Michigan's school facility problem, they often retreat to the position that there is no money to address it. This conception of the constraints to current policy options deserves closer consideration.

First, inaction by policy makers assures that existing disparities in school facilities will only get worse as the underlying inequalities in income and property wealth across Michigan communities continue to widen. So while legislators might prefer to avoid the issue in the hope that it will disappear, the experience of other states suggests that eventually anger over unequal tax burdens and corresponding substandard facilities will result in a lawsuit. At that point the remedies required by the court's intervention would almost certainly be more costly than if the problems were addressed sooner.

Second, the State of Michigan's chronic revenue shortage is only partially attributable to the economic downturn. It also reflects policy choices which have constrained state revenues. Over time Michigan citizens have devoted a steadily declining share of their income to state government services, as a result of tax rate cuts and tax rules that render every major state tax base inelastic with respect to state income growth. In 1978, Michigan voters approved the so-called Headlee Amendment, which created a constitutional limit on state revenue collections to no more than the share of personal income that prevailed in 1979, i.e., 9.49 percent. The Michigan Department of Treasury recently calculated that in FY 2010 the state's revenue collections will fall \$9 billion below the Headlee cap. Thus Michigan's revenue shortage is substantially a result of political decisions to continue to reduce taxes well below constitutional caps.

By way of comparison, Arsen & Davis (2008) estimate the investment cost of

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bringing school facilities up to an adequate standard in Michigan's poorest districts (those in the bottom 40 percentile of districts ranked by taxable value per pupil) at about \$3.6 billion. If the state amortized this investment in school infrastructure over 20 years at a six percent interest rate, the annual cost would be \$295 million. This is equivalent to roughly 3 percent of the annual tax savings that Michigan taxpayers currently receive as a result of devoting a lower share of their income to support state services than they did in 1978. An investment of this scale could be readily accommodated if the necessary revenues were generated through strongly progressive taxes falling primarily on households with the greatest ability to pay.

Third, in addition to boosting student outcomes and establishing a tangible sign of neighborhood revitalization, public investment in school facilities would generate needed demand in Michigan's construction and allied industries, an ideal strategy to counteract the state's sustained economic slump.

The simple reality, however, is that without judicial action, equal opportunity will never exist for Michigan's students. As in other states (e.g. Wyoming), the prevailing political stalemate in Michigan's legislative and executive branches means that intractable educational inequalities can only be addressed with court involvement.⁸ While judges are human and courts are not all-knowing, their function is to take evidence from all sides, consider highly complex issues, and make a reasoned, principled decision, apart from political passions. Because it is at the foundation of much of what courts do, equity, in whatever setting, is a principle that courts understand well.

While courts can provide a necessary impetus for action, the legislative and executive branches are still responsible for deciding how to provide adequate school resources for all children. So progress will turn largely on the extent to

which all three branches of government act in concert. Courts generally do not specify policy remedies in great detail, leaving that to state policy makers, at least initially. If policy makers do not act, or fail to meet constitutional standards, then courts will become more involved in specifics in subsequent, sometimes protracted, rounds of litigation. Thus, as Michael Rebell (2009) has observed after surveying adequacy litigation nationwide, "[s]ubstantially greater progress could be achieved...if judicial efforts, especially at the remedial stages of litigation were properly coordinated with appropriate policy initiatives of the legislative and executive branches."

If the Legislature works with the courts, by providing good information and practical recommendations, an acceptable resolution is more likely than if either acts alone. In some states (Kentucky, Vermont and Massachusetts) the legislature and the courts have cooperated to resolve facilities funding problems (Rebell, 2009). There is no reason it cannot be done in Michigan as well.

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Notes

¹ This section draws on a more extensive treatment in Arsen and Davis (2008).

² "The districts lack sufficient computers, computer labs, hands-on computer training, software, and related supplies to properly serve the students' needs. In this regard, it does not appear likely that the children in the appellant school districts will be able to compete in the job market against those students with sufficient technological training." (DeRolph v. Ohio, 1997, p. 744).

³ Governor v. State Treasurer (1973).

⁴ Rebell (2002) provides an overview of state court challenges to state education finance systems. Up-to-date information on state court litigation is available at National ACCESS Network, <http://www.schoolfunding.info>.

⁵ Kentucky - Rose v. Council for Better Educ. (1989); Montana - Helena Elementary Sch. Dist. No. 1 v. State (1989); Texas - Edgewood Indep. Sch. Dist. v. Kirby (1989).

⁶ The court's observations in Ohio's DeRolph case offer one example. "However, it is futile to lay the entire blame for the inadequacies of the present system on the taxpayers and the local boards of education. Although some districts have the luxury of deciding where to allocate extra dollars, many others have the burden of deciding which educational programs to cut or what financial institution to contact to obtain yet another emergency loan. Our state Constitution makes the state responsible for educating our youth. Thus, the state should not shirk its obligation by espousing cliches about 'local control.'" p. 747

⁷ These regrettable features of Michigan's approach to funding school facilities are gaining wider attention. The nation's most widely used school finance textbook, Odden and Picus (2008), singles out Michigan as a state where "poor districts had access to less [capital] funding due to their lower capacity and had lower-quality buildings, greater unmet need, and higher effective tax rates. Thus the funding system in Michigan produced a negative impact on poor districts in every possible way" (173).

⁸ "We perceive the state's failure to reform the capital construction financing system consistent with this court's direction in Washakie and Campbell is caused by the political difficulties created by such reforms. This situation, perhaps as much as any other in our state's history, underscores the need for and wisdom of three separate and independent branches of government. It is the duty of the judiciary to assure the mandates of our state constitution are followed even if it is politically unattractive" (State v. Campbell County School Dist., 2001, p. 559).

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